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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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THE HONORABLE EDWARD RAFFEDIE, SENIOR U.S. DISTRICT JUDGE

JOAN HILTON,  
PLAINTIFF  
V.  
LIBERTY LIFE ASSURANCE COMPANY  
OF BOSTON, ET AL.  
DEFENDANTS.

CV 05-3416-ER

COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
MONDAY, OCTOBER 29, 2007  
10:00 A.M.

FREDA MENDELSON  
COURT REPORTER #3922  
310-829-3851

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APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

RUSSELL G. PETTI  
ATTORNEY AT LAW  
466 FOOTHILL BLVD. #389  
LA CANADA, CA 91011  
TEL: (818) 952-2168

ON BEHALF OF THE DEFENDANTS:

KATHERINE C. CURRY  
ATTORNEY AT LAW  
1001 MARSHALL STREET  
REDWOOD CITY, CA 94063  
TEL: 650-364-8200

1 LOS ANGELES, CALIFORNIA; MONDAY, OCTOBER 29, 2007

2 10:00 A.M.

3 THE CLERK: CALLING CALENDAR ITEM NUMBER 1: JOAN  
4 HILTON V. LIBERTY LIFE ASSURANCE COMPANY OF BOSTON,  
5 CV 05-3416.

6 COUNSEL, PLEASE STATE YOUR APPEARANCES.

7 MR. PETTI: GOOD MORNING, YOUR HONOR.

8 RUSSELL PETTI REPRESENTING THE PLAINTIFF JOAN HILTON.

9 MS. CURRY: GOOD MORNING, YOUR HONOR.

10 KATHERINE CURRY REPRESENTING DEFENDANTS LIBERTY  
11 LIFE ASSURANCE COMPANY OF BOSTON AND THE FARMERS GROUP LONG  
12 TERM DISABILITY PLAN.

13 THE COURT: WELL, I'LL TRY TO MAKE A PRELIMINARY  
14 STATEMENT TODAY, NOT RELATED TO THIS. BUT HALLOWEEN WILL  
15 MARK MY 38TH YEAR ON THE BENCH --

16 (APPLAUSE.)

17 THE COURT: THAT'S NOT NECESSARY. THANK YOU, THOUGH.

18 BUT I CONTINUE TO BE JUST PUZZLED BY WHY PEOPLE  
19 SUE EACH OTHER AND CONTINUE TO PURSUE LITIGATION THAT IN THE  
20 END WILL YIELD NOTHING BUT MAYBE PERSONAL SATISFACTION,  
21 WILL COST BOTH OF THE PARTIES MONEY AND WILL ACCOMPLISH  
22 ABSOLUTELY NOTHING, AND IT'S LITIGATED, AND, I SUPPOSE,  
23 FROM THE STANDPOINT OF THE LAWYERS IT'S OKAY, BUT FROM THE  
24 STANDPOINT OF THE COURT IT SEEMS LIKE AN UNNECESSARY WAY TO  
25 RESOLVE PROBLEMS. LET'S GET ON WITH YOUR CASE.

1           NOW, THIS IS THE PLAINTIFF'S MOTION FOR SUMMARY  
2 JUDGMENT, AND THE DEFENDANT HAS FILED A CROSS MOTION FOR  
3 SUMMARY JUDGMENT.

4           I HAVE READ THE RECORD THAT HAS BEEN PRESENTED TO  
5 THE COURT, AND I NOW WANT TO SHARE WITH YOU MY TENTATIVE  
6 CONCLUSIONS AND THE REASONS; AND THEN I WILL PERMIT THE  
7 AGGRIEVED PARTY -- OR BOTH AGGRIEVED PARTIES, SINCE THERE ARE  
8 TWO -- TO BE HEARD.

9           AS A PRELIMINARY MATTER, THE DEFENDANTS' CROSS-  
10 MOTION FOR SUMMARY JUDGMENT FILED ON OCTOBER 15TH OF 2007,  
11 VIOLATED THE COURT'S SCHEDULING ORDER, WHICH REQUIRED ALL  
12 MOTIONS IN THIS CASE TO BE FILED BY OCTOBER 4TH OF 2007.

13           PURSUANT TO RULE 16(B) OF THE FEDERAL RULES OF  
14 CIVIL PROCEDURE, THE COURT CAN DENY A MOTION NOT FILED BY A  
15 DEADLINE STATED IN THE COURT'S SCHEDULING ORDER IF THE PARTY  
16 FAILS TO SHOW GOOD CAUSE FOR NOT FILING THE MOTION WITHIN  
17 THE TIME SPECIFIED.

18           BECAUSE THE DEFENDANTS HAVE NOT SHOWN ANY CAUSE FOR  
19 THE DELAY, THE COURT WILL SIMPLY CONSIDER THIS MOTION, NOT  
20 AS A MOTION FOR SUMMARY JUDGMENT, BUT AS AN OPPOSITION TO  
21 THE PLAINTIFF'S MOTION RATHER THAN A CROSS-MOTION FOR  
22 SUMMARY JUDGMENT.

23           NOW, THERE'S A RULE 56 ISSUE HERE. THE NORMAL  
24 RULE 56 STANDARD -- BY THE WAY, WHEN I SAID "HALLOWEEN," I  
25 THOUGHT YOU PEOPLE WOULD SAY THAT WAS AN APPROPRIATE DATE

1 FOR ME TO BE APPOINTED.

2 MR. PETTI: NO, YOUR HONOR, NOT SO.

3 THE COURT: THE NORMAL RULE 56 STANDARD FOR MOTIONS  
4 FOR SUMMARY JUDGMENT, THAT IS, NO GENUINE ISSUE OF MATERIAL  
5 FACT, DOES NOT APPLY WHEN REVIEWING A DECISION TO GRANT OR  
6 DENY BENEFITS UNDER AN "EMPLOYEE RETIREMENT INCOME SECURITY  
7 ACT" PLAN.

8 THAT IS THE CASE LAW IN THIS CIRCUIT: BENDIXEN V.  
9 STANDARD INSURANCE COMPANY.

10 THE PLAINTIFF HAS CONCEDED FOR THE PURPOSE OF THIS  
11 MOTION THAT THE ABUSE OF DISCRETION STANDARD APPLIES.

12 THE COURT WILL REVIEW THE DEFENDANTS' DECISION  
13 DENYING PLAINTIFF DISABILITY BENEFITS UNDER THE ABUSE OF  
14 DISCRETION STANDARD FOR THE PURPOSES OF THIS SUMMARY  
15 JUDGMENT MOTION.

16 BECAUSE THE DEFENDANT IS AN ERISA FIDUCIARY UNDER  
17 THE LAW, IT HAS A DUTY TO UNDERTAKE A REASONABLE AND  
18 THOROUGH, GOOD FAITH INVESTIGATION TO DETERMINE IF PLAINTIFF  
19 IS ENTITLED TO LONG-TERM DISABILITY BENEFITS. HOWEVER,  
20 THE CLAIMANT BEARS THE BURDEN OF PROVING THAT THE CLAIM  
21 ADMINISTRATOR ABUSED ITS DISCRETION AND, UNDER THE ABUSE OF  
22 DISCRETION STANDARD, A COURT MAY NOT SUBSTITUTE ITS OWN  
23 JUDGMENT FOR THAT OF THE ADMINISTRATOR UNLESS THE ADMINISTRA-  
24 TOR RELIED ON CLEARLY ERRONEOUS FINDINGS OF FACT, RENDERED  
25 ITS DECISION WITHOUT AN EXPLANATION, OR CONSTRUED PROVISIONS

1 OF THE PLAN IN A WAY THAT CONFLICTS WITH THE PLAIN LANGUAGE  
2 OF THE PLAN.

3 THE PLAN IN QUESTION, PROVIDED BY THE DEFENDANT  
4 LIBERTY, SPECIFIES THAT BENEFITS ARE PAYABLE IF THE "COVERED  
5 PERSON IS UNABLE TO PERFORM ALL OF THE MATERIAL AND SUBSTAN-  
6 TIAL DUTIES OF HIS OCCUPATION ON AN ACTIVE EMPLOYMENT BASIS  
7 BECAUSE OF AN INJURY OR SICKNESS."

8 THE PLAN FURTHER QUALIFIES THAT THE INSURED IS  
9 CONSIDERED TOTALLY DISABLED IF "CONTINUOUSLY UNABLE TO  
10 PERFORM THE SUBSTANTIAL MATERIAL DUTIES OF YOUR REGULAR  
11 OCCUPATION."

12 NOW FIRST, ALTHOUGH, QUOTE, "HIS OCCUPATION" AND  
13 "YOUR REGULAR OCCUPATION" ARE NOT FURTHER DEFINED IN THE  
14 POLICY, THE PLAIN LANGUAGE, SPECIFICALLY THE WORDS "HIS" AND  
15 "YOUR," INDICATE TO THE INSURED THAT HER OWN ACTUAL JOB  
16 DUTIES WILL BE AT LEAST TAKEN INTO ACCOUNT IN DETERMINING  
17 WHETHER SHE IS DISABLED.

18 FURTHERMORE, WHILE THERE IS A CIRCUIT SPLIT ON THE  
19 ISSUE, THE WEIGHT OF AUTHORITY SEEMS TO SUPPORT THE PROPOSI-  
20 TION THAT "OWN OCCUPATION" SHOULD BE A POSITION OF THE SAME  
21 GENERAL CHARACTER AND THAT THE INSURED'S ACTUAL DUTIES  
22 SHOULD AT THE VERY LEAST BE TAKEN INTO ACCOUNT.

23 THERE IS SOME CASE LAW OUT THERE PURPORTING TO  
24 DEFINE THE TERM "REGULAR" OCCUPATION, TO MEAN, "THE TERM  
25 REGULAR OCCUPATION UNAMBIGUOUSLY REFERS TO THE USUAL WORK

1 THAT THE INSURED PERFORMED IMMEDIATELY BEFORE THE ONSET OF  
2 THE DISABILITY."

3 THUS, IN LIGHT OF THE PLAIN LANGUAGE OF THE PLAN AND  
4 THE WEIGHT OF THE AUTHORITY, THE COURT FINDS THAT "OWN" OR  
5 "REGULAR" OCCUPATION MUST TO SOME EXTENT ACCOUNT FOR THE  
6 INSURED'S ACTUAL DUTIES BEFORE THE INJURY.

7 NOW, DEFENDANT LIBERTY CONTENDS, IN ITS PAPERS,  
8 THAT IT DID NOT IGNORE PLAINTIFF'S ACTUAL JOB DUTIES, BUT  
9 ONLY RELIED ON THE "DICTIONARY OF OCCUPATIONAL TITLES (DOT)"  
10 TO THE EXTENT THAT IT FOUND THE DUTIES DESCRIBED IN THE  
11 D.O.T. WERE SIMILAR TO THE DUTIES DESCRIBED BY PLAINTIFF'S  
12 EMPLOYER, FARMERS GROUP. AND WHILE IT WAS NOT AN ABUSE OF  
13 DISCRETION TO CONSULT THE D.O.T. PER SE, LIBERTY CONCLUDED  
14 THAT PLAINTIFF'S LITIGATION SECRETARY JOB WAS SEDENTARY  
15 WHEN IT HAD LETTERS FROM THE ATTORNEYS SHE WORKED FOR  
16 ATTESTING TO THE AMOUNT OF MOBILITY THE JOB REQUIRED, ONE  
17 FROM THE ATTORNEY SHE WORKED FOR AT FARMERS, AND WHEN ITS  
18 OWN VOCATIONAL CASE MANAGER, "ACKNOWLEDGED THAT CLAIMANT'S  
19 LITIGATION/LEGAL SECRETARY JOB MAY HAVE ENTAILED PHYSICAL  
20 DEMANDS EXCEEDING THE SEDENTARY LEVEL." END QUOTE.

21 EVEN LIBERTY'S OWN DENIAL LETTER STATES, "THE  
22 DEFINITION OF DISABILITY AS DEFINED IN THE PLAN REFERS TO  
23 THE INABILITY TO PERFORM ONE'S OWN OCCUPATION IN THE USUAL  
24 AND CUSTOMARY WAY, RATHER THAN THE INABILITY TO PERFORM THE  
25 SPECIFIC DUTIES OF ONE'S OWN JOB."

1           THUS IT SEEMS CLEAR TO THE COURT THAT LIBERTY FOUND  
2 THE PLAINTIFF'S JOB DUTIES ACTUALLY ENTAILED MORE THAN  
3 SEDENTARY WORK BUT STILL CONCLUDED THAT HER OWN OCCUPATION  
4 WAS SEDENTARY, LARGELY IN REFERENCE TO THIS MANUAL OF  
5 OCCUPATIONS. AS SUCH, THE COURT TENTATIVELY INTENDS TO FIND  
6 THAT THIS DETERMINATION WAS AN ABUSE OF DISCRETION.

7           IN ADDITION, THE COURT INTENDS TO FIND THAT LIBERTY  
8 FURTHER ABUSED ITS DISCRETION BY RELYING ON ITS CONSULTANT  
9 DR. CHMELL'S SEEMINGLY UNSUBSTANTIATED OPINION THAT PLAINTIFF  
10 WAS PHYSICALLY CAPABLE OF DOING EVEN THE SEDENTARY WORK  
11 REQUIRED BY ITS OWN DEFINITION OF HER LEGAL SECRETARY  
12 POSITION. DR. CHMELL SOMEHOW DETERMINED SHE COULD WALK OR  
13 STAND UP FOR TWO OUT OF EIGHT HOURS A DAY WHEN HE NEVER  
14 PHYSICALLY EXAMINED HER OR EVEN SPOKE WITH HER. AND WHEN  
15 THE RECORD UNDISPUTABLY INDICATES THAT SHE SUFFERED A SEVERE  
16 FRACTURE, WHICH HAS REQUIRED THREE SURGERIES TO DATE AND  
17 NEVER HEALED, THAT SHE IS IN CONSTANT SEVERE PAIN, WHICH IS  
18 TREATED WITH NARCOTICS, AND THAT SHE CANNOT WALK -- ONE OF  
19 HER DOCTORS REPORTED AS OF MAY 13TH, 2004 THAT SHE COULD  
20 WALK 0 HOURS PER DAY AND ANOTHER REPORTED AS OF NOVEMBER OF  
21 2005 SHE COULD WALK 6 OR 7 STEPS WITH CRUTCHES OR A WALKER.

22           THE COURT IS AWARE THAT AN ADMINISTRATOR DOES NOT  
23 ABUSE ITS DISCRETION WHEN IT RELIES ON THE MEDICAL OPINION  
24 OF A CONSULTING PHYSICIAN WHOSE OPINION CONFLICTS WITH THE  
25 CLAIMANT'S TREATING PHYSICIAN, EVEN IF THE CONSULTING

1       PHYSICIAN NEVER PHYSICALLY EXAMINES THE CLAIMANT.

2               HOWEVER, GIVEN THE OVERWHELMING EVIDENCE IN THE  
3       RECORD INDICATING PLAINTIFF IS IN FACT SEVERELY DISABLED,  
4       THIS DOES NOT APPEAR TO BE A SITUATION WHERE THE ADMINISTRA-  
5       TOR PROPERLY USED ITS DISCRETION TO DECIDE BETWEEN TWO  
6       CONFLICTING OPINIONS.

7               THE COURT FURTHER NOTES THAT EVERY SINGLE DOCUMENT  
8       LIBERTY CITES IN ITS OPPOSITION AS EVIDENCE THAT PLAINTIFF  
9       WAS HEALING WELL, ALSO CONTAINS INDICATIONS THAT PLAINTIFF  
10      IS IN CONSTANT PAIN AND UNABLE TO WALK. THIS WAS IGNORED.

11              IT IS UNNECESSARY TO GO THROUGH EVERY DOCUMENT HERE,  
12      BUT AS ONE EXAMPLE, THE DEFENDANT CITES THE JULY 10TH NOTE  
13      FROM DR. CONARD AS "INDICATING PLAINTIFF REPORTED BEING  
14      MORE ACTIVE AND DENIED SIDE EFFECTS FROM MEDICATION" -- END  
15      QUOTE -- BUT DOES NOT MENTION THAT THE SAME NOTE FURTHER  
16      STATES "PATIENT PRESENTS TODAY IN A WHEELCHAIR. PATIENT  
17      PRESENTED WITH CHRONIC INTRACTABLE PAIN SYNDROME." AND  
18      LIBERTY'S APPARENT RELIANCE ON THE FACT THAT PLAINTIFF  
19      WORKED FROM HOME PERFORMING PHONE INTERVIEWS FOR 10-15 HOURS  
20      PER WEEK AS EVIDENCE THAT SHE HAD WORK CAPACITY IS NOT  
21      COMPELLING; IT IS NOT CLEAR HOW SUCH EVIDENCE COULD POSSIBLY  
22      SUPPORT THE PROPOSITION THAT SHE WAS CAPABLE OF WORKING  
23      OUTSIDE HER HOME DOING THE WORK SHE WAS REQUIRED TO DO AS A  
24      LEGAL SECRETARY FOR EIGHT HOURS A DAY.

25              THE COURT FURTHER FINDS SUPPORT FOR ITS TENTATIVE

1 CONCLUSIONS THAT LIBERTY ABUSED ITS DISCRETION IN DENYING  
2 PLAINTIFF'S BENEFITS IN THE FACT THAT THE SOCIAL SECURITY  
3 ADMINISTRATION -- WHICH IS A TOUGH CUSTOMER WHEN FINDING  
4 PEOPLE DISABLED -- THE SOCIAL SECURITY ADMINISTRATION  
5 DETERMINED THAT THE PLAINTIFF WAS DISABLED, AND THAT FINDING  
6 REQUIRES, GENERALLY SPEAKING, INABILITY TO DO ANY KIND OF  
7 WORK. AND THAT IN THE FACT THAT LIBERTY EMPLOYEE MS. ODOM,  
8 WHO INITIALLY DENIED PLAINTIFF'S CLAIM, APPEARS TO HAVE  
9 WORKED ON THE APPEAL AS WELL.

10 FOR ALL OF THESE REASONS STATED, THE COURT'S  
11 TENTATIVE CONCLUSION IS TO GRANT THE PLAINTIFF'S MOTION  
12 FOR SUMMARY JUDGMENT, FINDING THAT THE PLAINTIFF WAS DISABLED  
13 UNDER THE, QUOTE, "OWN OCCUPATION" PROVISION OF THE PLAN  
14 BECAUSE SHE WAS AND REMAINS UNABLE TO PERFORM THE WORK  
15 ENTAILED BY HER LEGAL SECRETARY JOB AND, AS SUCH, DEFENDANTS  
16 ABUSED THEIR DISCRETION IN DENYING HER BENEFITS.

17 NOW, DO YOU WISH TO BE HEARD, COUNSEL?

18 MS. CURRY: YES, YOUR HONOR.

19 THE COURT: WHERE DID I GO WRONG?

20 MS. CURRY: YOUR HONOR, WITH RESPECT TO THE FIRST  
21 FINDING, THE ABUSE DISCRETION RELYING ON THE DICTIONARY OF  
22 OCCUPATIONAL TITLES, ACTUALLY LIBERTY DID RELY ON BOTH: THE  
23 ACTUAL JOB DESCRIPTION PROVIDED BY FARMERS.

24 NOW, THE ACTUAL DESCRIPTION PROVIDED BY FARMERS --

25 THE COURT: WELL, THAT'S A MINOR POINT.

1 MS. CURRY: RIGHT --

2 THE COURT: BUT YOU'RE ENTITLED TO LOOK AT THAT. IT'S  
3 OKAY.

4 MS. CURRY: BUT ACCORDING TO THE JOB DESCRIPTION  
5 PROVIDED BY FARMERS --

6 THE COURT: WELL, DO YOU THINK A JOB DESCRIPTION  
7 CONTAINED IN A BOOK SHOULD TAKE PRECEDENCE OVER WHAT THE  
8 PERSON ACTUALLY DOES AT WORK?

9 MS. CURRY: I THINK THE JOB DESCRIPTION PROVIDED BY  
10 THE EMPLOYER TAKES PRECEDENCE OVER THE JOB AS DESCRIBED BY  
11 THE PLAINTIFF AFTER THE CLAIM WAS DENIED, AND BY --

12 THE COURT: BUT IF THE PLAINTIFF IS WORKING FOR THE  
13 EMPLOYER, SHE IS MANDATED TO DO WHAT SHE IS REQUIRED TO DO  
14 BY HER BOSS, THE EMPLOYER.

15 IS SHE TO TAKE THE POSITION THAT THIS IS OUTSIDE  
16 THE JOB DESCRIPTION THAT I HIRED ON TO DO AND I CANNOT DO  
17 THIS, I CANNOT CARRY THIS OR I CANNOT WALK OVER THERE?

18 MS. CURRY: FARMERS PROVIDED THE JOB DESCRIPTION.  
19 THE JOB DESCRIPTION HERE IS SET FORTH WHAT THE ESSENTIAL  
20 JOB DUTIES WERE. THAT'S THE MATERIAL SUBSTANTIAL DUTIES OF  
21 THE JOB.

22 WHAT THE VOCATIONAL EXPERT SAID WAS THAT THE FACT  
23 THAT SHE'S ALLEGING SHE HAD TO DO ADDITIONAL DUTIES ABOVE  
24 THOSE DOES NOT MEAN THAT SHE WAS DISABLED FROM PERFORMING  
25 THE MATERIAL SUBSTANTIAL DUTIES OF HER JOB. AND FARMERS

1 LISTED WHAT SHE HAD TO DO IN FILING, AND IT JUST REQUIRED  
2 OCCASIONAL WALKING.

3 NOW, I UNDERSTAND THAT PLAINTIFF'S MOTION WAS BASED  
4 ON -- AND THE COURT HAS AGREED -- THAT SHE WAS UNABLE TO  
5 WALK. BUT HER DOCTOR STATED AT THE TIME -- HER OWN DOCTOR,  
6 DR. BALES, AT THE TIME OF THE DECISION, SAID THAT SHE  
7 COULD OCCASIONALLY WALK. DR. PARISI AGREED. DR. CHMELL  
8 AGREED.

9 SO THE RECORD AND THE EVIDENCE IS -- AND DR. CHMELL'S  
10 REPORT WAS GIVEN TO PLAINTIFF TO DISPUTE. AND IT WAS NOT.  
11 SO THE FINDING THAT SHE COULD NOT WALK IS NOT SUPPORTED BY  
12 THE RECORD.

13 DR. CHMELL -- I KNOW PLAINTIFF'S COUNSEL STATED IN  
14 HIS REPLY BRIEF THAT DR. CHMELL BASED HIS INFORMATION ON --  
15 BASED HIS INFORMATION ON VERY LIMITED RECORDS. THAT IS NOT  
16 TRUE. HE LOOKED AT EVERY SINGLE PIECE OF INFORMATION. HE'S  
17 AN ORTHOPEDIC SURGEON. HE ACKNOWLEDGED ACTUALLY IN HIS  
18 FINDINGS THAT THERE WAS A NONUNION. THE ONLY WAY TO COME  
19 UP WITH THAT FINDING WAS FOR HIM TO REVIEW ALL OF THE  
20 RECORDS, AND HE STATED THAT BASED ON ALL THE RECORDS AND  
21 HER MEDICAL CONDITION AND THE SURGERIES THAT SHE HAD  
22 SEDENTARY WORK CAPACITIES, WHICH HER OWN DOCTOR HAD ALSO  
23 SAID, AND SHE WAS ABLE TO OCCASIONALLY WALK.

24 THE COURT: COUNSEL, ONLY AN ADVOCATE COULD TAKE THE  
25 POSITION THAT YOU HAVE TAKEN, AND I ADMIRE YOU FOR YOUR

1 ZEAL, BUT YOU'RE NOT GETTING ANYWHERE IN ENCOUNTERING THE  
2 REASONS GIVEN BY THE COURT FOR ITS TENTATIVE DECISION, AND  
3 THE COURT INTENDS TO STAND BY THAT DECISION. THANK YOU.

4 MS. CURRY: THANK YOU, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 NOW, COUNSEL, THE COURT WILL ENTER JUDGMENT ON THE  
7 SUMMARY JUDGMENT -- ARE YOU SEEKING A MONEY JUDGMENT OR  
8 SIMPLY A JUDGMENT ORDERING THE PAYMENT OF THE BENEFITS DUE  
9 UNDER THE PLAN?

10 MR. PETTI: YOUR HONOR, JUST THE PAYMENT OF THE  
11 BENEFITS FOR THE REMAINDER OF THE 24-MONTH "OWN OCCUPATION"  
12 PERIOD, AND IT DEPENDS ON SOME OFFSETS, AND THAT'S THE  
13 SORT OF --

14 THE COURT: WELL, YOU PEOPLE WILL FIGURE THAT OUT.

15 MS. CURRY: YES, YOUR HONOR. THANK YOU.

16 THE COURT: ALL RIGHT. THANK YOU, COUNSEL.

17 (PROCEEDINGS CONCLUDED.)

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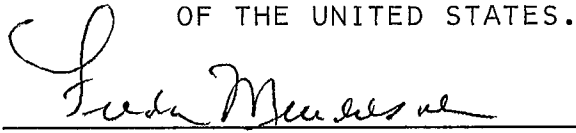
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I CERTIFY THAT THE FOREGOING IS A  
CORRECT TRANSCRIPT FROM THE RECORD  
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5-1-08

FREDA MENDELSON  
COURT REPORTER #3922